Q-1 Motor Express, Inc. *and* Donald Ray Denham, Dan W. Stevens, and Anthony Lupo *and* General Drivers, Warehousemen & Helpers Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO. Cases 9–CA–28654–1, –2, –3, and 9–CA–28762

September 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

Exceptions filed to the judge's decision in this case[1] present issues regarding whether the Respondent, in the context of a union organizing campaign, committed violations of Section 8(a)(1) and (3) of the Act and whether a bargaining order is warranted to remedy the unfair labor practices.

The Board has considered the decision and the record in light of the exceptions[2] and brief and has decided to affirm the judge's rulings, findings,[3] and conclusions as modified, and to adopt his recommended Order, as modified.

1. The complaint alleged that the Respondent violated Section 8(a)(1) in nine separate instances.[4] The judge found the violations as alleged, and we agree with these findings for the reasons set forth by him. The judge, however, found six[5] additional 8(a)(1) violations which were not alleged in the complaint,[6] and

[1] On March 11, 1992, Administrative Law Judge Walter H. Maloney issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

[2] On May 20, 1992, the Respondent filed a motion requesting the Board to reopen the record in this case to include the transcript of the 10(j) proceeding in this case before the United States District Court, Southern District of Indiana, Indianapolis Division. The General Counsel filed a brief in opposition to the Respondent's motion, and the Respondent filed a reply brief. We deny the motion.

Contrary to the Respondent's contention, the transcript of the 10(j) proceeding is neither newly discovered evidence nor evidence which has become available since the close of the hearing. The hearing in the 10(j) proceeding was held on October 9, 16, and 21, 1991, and the instant unfair labor practice hearing was held on December 2, 3, and 4, 1991. The Respondent received the first two volumes of the transcript from the 10(j) proceeding before the close of the instant hearing but made no attempt to introduce them into evidence. Further, the third and final volume of the 10(j) proceeding was mailed to the Respondent on December 2, 1991. Even if, as the Respondent contends, it did not receive it prior to the close of the instant hearing, it made no motion to the judge to admit the transcript, although it attached a copy of the district court's decision to its posthearing brief to the administrative law judge. Under these circumstances, the Respondent clearly knew of the existence of the transcript of the 10(j) proceeding at the time of the instant hearing, and thus this transcript can not now be deemed to constitute newly discovered evidence or evidence which has become available only since the close of the hearing under Sec. 102.48(d)(1) of the Board's Rules and Regulations.

Further, introduction into evidence of the transcript of the 10(j) proceeding would not require a different result than that reached by the administrative law judge, as also required by Sec. 102.48(d)(1) of the Board's Rules and Regulations. The fact that the administrative law judge reached different credibility resolutions than the district court judge does not invalidate the credibility resolutions of the administrative law judge, who is entitled to base his resolutions on the record evidence in the hearing before him. See *NLRB v. Pacific Intermountain Express Co.*, 228 F.2d 170, 176 (1955).

[3] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolution unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

The Respondent contends that the judge's rulings and conduct of the hearing demonstrated bias against the Respondent. Our review of the record reveals no evidence that the judge prejudged the case, made prejudicial rulings, or demonstrated any bias against the Respondent.

The judge incorrectly stated that Anthony Lupo came to the Respondent's office to pick up his last paycheck on June 1, 1991, rather than June 17, 1991. We find that this inadvertent error does not affect the validity of his findings.

We disavow the judge's statement that the fact that the Respondent's president James E. Schroering (JE) sought legal advice before discharging employee Donald Ray Denham ''suggests that he was plotting his course carefully from the outset.''

[4] The nine instances alleged in the complaint are: (a) Supervisor Leah Conrad told employee Lupo that management was aware that union cards were being distributed and that Lupo should stay away from those who were involved if he knew what was good for him; (b) JE told employee Denham that he had learned from another employee that Denham was the one who was passing out union cards; (c) JE told Denham that the Respondent would have to fire its drivers, close down, and hire all new drivers; (d) JE told Denham that no ''half-ass union'' would come in and tell him how to run his business and that he would close the doors and open under a new name; (e) the Respondent awarded employees a pay raise of 1 cent per mile; (f) JE promised at an employee meeting in response to an employee request that he would put Lupo on the drivers' list as a regular full-time employee; (g) JE told employee Stevens that he knew the identities of everyone who had signed a union card; (h) JE told Stevens that he would be willing to fire all of his employees if that was what it took to keep the Union out; and (i) JE told Lupo that the Respondent was not a union company and if he were Lupo, he would not worry about missing out on dispatches because Lupo was on the way out.

[5] Although the judge's decision says that there were seven 8(a)(1) violations not alleged in the complaint, he twice mentioned the same incident involving JE's statement to employee Hogan that unionization would bring a policy of forced dispatch into the Respondent.

[6] The six additional 8(a)(1) violations found by the judge are based on the following incidents: (a) Conrad informed JE that union cards were being distributed and that Denham was involved with the distribution; (b) Conrad told employee Hogan, in the presence of her husband, also an employee, that she would hate to see her husband join the Union because he would have to find another job; (c) JE told Denham that he had called Denham's previous employer and learned that Denham had been a member of the Union for 10 years; (d) JE called Longoria, the wife of an employee, and asked her what she knew about the employees' union activities; (e) JE told Longoria that her husband had gotten himself ''in a fix'' because of his union activities and suggested that the Respondent might take an adverse personnel action against him because of an old accident; (f) JE told employee Longoria that he was not going to let the Union come in and destroy everything he and his father had built and that he could

Continued

the Respondent excepts to these findings. We find merit in the Respondent's exceptions.

It is undisputed that the six additional 8(a)(1) violations were not alleged in the complaint, nor did the General Counsel seek to amend the complaint at the hearing to include these violations. Further, the General Counsel made a statement at the hearing indicating that evidence regarding these additional instances was adduced as background for the alleged incidents,[7] and he did not contend in his posthearing brief to the judge that these instances constituted additional violations of Section 8(a)(1). Under these circumstances, we find that the Respondent did not have fair notice that the judge would make findings of violations of the Act based on these unalleged instances. Therefore, these instances were not fully and fairly litigated at the hearing. See *Cafe La Salle*, 280 NLRB 379, 382 (1986); *Seaward International*, 270 NLRB 1034 (1984). Accordingly, we dismiss these additional 8(a)(1) findings made by the judge.[8]

2. Although we have dismissed certain of the 8(a)(1) findings made by the judge, we find, in agreement with the judge, that a *Gissel*[9] bargaining order is warranted to remedy the remaining unfair labor practices found by the judge and which we adopt for the reasons set forth by him.

Shortly after the employees began their organizing activities on behalf of the Union, the Respondent began its campaign of threats and intimidation of employees designed to undermine the Union's strength. Thus, the Respondent's president James E. Schroering (JE) and Supervisor Leah Conrad created the impression of surveillance of the employees' union activities by telling employees that they knew that union cards were being distributed and that they knew which employees were passing out and signing the cards. Further, JE threatened to discharge the employees and close down the facility to keep out the Union and Conrad threatened an employee with unspecified reprisals if he engaged in union activities. In addition, the employees received a pay raise of 1 cent per mile and JE promised to adjust a grievance to discourage union activities. Finally, the Respondent discharged three employees because of their union activities.

We have emphasized, with court approval, that threats of plant closure and discharge not only are ''hallmark'' violations but are '''among the most flagrant' of unfair labor practices.'' *Action Auto Stores*, 298 NLRB 875 (1990) (citing *Indiana Cal-Pro, Inc. v. NLRB*, 863 F.2d 1292, 1301–1302 (6th Cir. 1988), enfg. 287 NLRB 796 (1987)). The coercive effect of these threats are especially great in this case because they were communicated by the Respondent's president and commenced soon after the advent of the Union on the scene. See *Somerset Welding & Steel*, 304 NLRB 32 (1991). In addition, the Respondent unlawfully granted a wage increase to all the employees, and unlawfully promised to remedy a grievance.

Moreover, the Respondent violated Section 8(a)(3) of the Act by unlawfully discharging three bargaining unit members. We find that these 8(a)(1) and (3) violations, which threaten the very livelihood of employees, are likely to have a lasting impact which is not easily erased by the mere passage of time or the Board's usual remedies, especially given the small size of the bargaining unit and the fact that the unfair labor practices affected each of the employees. See *Action Auto Stores*, supra. Finally, we find, contrary to the Respondent's contention, that evidence concerning employee turnover is an irrelevant consideration when assessing the propriety of issuing a *Gissel* bargaining order and, even if considered, would not require a different result. See *F&R Meat Co.*, 296 NLRB 759 (1989). Accordingly, we agree with the judge that the possibility of erasing the effects of the Respondent's extensive and serious violations is slight and the holding of a fair election unlikely. Therefore, we conclude that a *Gissel* bargaining order is appropriate.[10]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Q-1 Motor Express, Inc., Clarksville, Indiana, its officers,

turn the Respondent over to a sister company; and (g) JE told Hogan that unionization would bring a policy of forced dispatch into the Respondent.

[7] In response to the Respondent's objection to the admission of evidence pertaining to one of the incidents not alleged in the complaint, the General Counsel stated, ''This proves, if nothing else, knowledge and animus.''

[8] We also note that the judge erred in finding that Conrad's statement to JE that union cards were being distributed constituted a violation of Sec. 8(a)(1). Because this conversation took place between two supervisors and was not made in the presence of any employees, we find no violation of the Act.

[9] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[10] The judge found that May 19, the date the Union obtained majority status, rather than July 18, the date the Union demanded recognition, is the appropriate date to use for the remedial order, because such an order is a remedy for an 8(a)(1) violation, not an 8(a)(5) violation. He also found that the Respondent violated Sec. 8(a)(5), as well as Sec. 8(a)(1), as of May 19. No 8(a)(5) violation can be found as of that date, however, because no demand had as yet been made, a critical element for making such a finding. *Trading Port*, 219 NLRB 298, 300 (1975). Further, we disavow his statements to the effect that they imply that July 18 would not be the appropriate date for finding an 8(a)(5) bargaining order as a remedy for the Respondent's unlawful conduct. Nevertheless, we shall not disturb his finding May 19 to be an appropriate date for the remedial bargaining order given here. No exceptions have been taken by the General Counsel or the Charging Party to his failure to find a violation of Sec. 8(a)(5) based on the July 18 demand. Moreover, Sec. 8(a)(5) is not a sine qua non for a remedial bargaining order and an 8(a)(5) violation would not add to the remedy in this case. See *Peaker Run Coal Co.*, 228 NLRB 93, 94–95 (1977).

agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraph 1(a) and reletter the subsequent paragraphs.

2. Substitute the following for paragraph 1(e).

''(e) Threatening employees with unspecified reprisals for engaging in union activities.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT create in the minds of our employees the impression that their union activities are the subject of company surveillance.

WE WILL NOT grant pay increases and promise to adjust grievances in order to discourage union activities.

WE WILL NOT threaten to discharge employees or to close the terminal in order to discourage union activities.

WE WILL NOT threaten employees with unspecified reprisals for engaging in union activities.

WE WILL NOT discharge employees or otherwise discriminate against them in their hire or tenure in order to discourage their support for General Drivers, Warehousemen & Helpers Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO, or any other labor oraganization.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of rights guaranteed to them by Section 7 of the Act.

WE WILL, on request, bargain collectively in good faith with General Drivers, Warehousemen & Helpers Local Union No. 89, affiliated with the International Brotherood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of all the full-time and regular part-time drivers and driver mechanics employed at our Clarksville, Indiana terminal, exclusive of office clerical employees and supervisors as defined in the Act.

WE WILL offer full and immediate reinstatement to Donald Ray Denham, Dan W. Stevens, and Anthony Lupo to their former or substantially equivalent employment, and WE WILL make them whole for any loss of pay which they have suffered by reason of the discrimination practiced against them, with interest.

WE WILL remove from our files any references to the unlawful discharges and disciplinary actions taken against Donald Ray Denham, Dan W. Stevens, and Anthony Lupo, and WE WILL notify them in writing that this has been done.

Q-1 MOTOR EXPRESS, INC.

James E. Horner, Esq., for the General Counsel.
I. Joel Frockt, Esq., of Louisville, Kentucky, for the Respondent.

DECISION

STATEMENT OF THE CASE

WALTER H. MALONEY, Administrative Law Judge. This case came on for hearing before me at Louisville, Kentucky, on an amended consolidated unfair labor practice complaint,[1] issued by the Acting Regional Director for Region 9, which alleges that Respondent Q-l Motor Express, Inc.[2] violated Section 8(a)(1), (3), and (5) of the Act. More particularly, the amended consolidated complaint alleges that the Respondent coercively interrogated employees concerning their union activities, threatened to close its plant in reprisal for the union activities of employees, informed employees that it would be futile for employees to select the Union as their bargaining agent, threatened employees with more onerous terms and conditions of employment if they unionized, created the impression that the union activities of employees were the subject of company surveillance, threatened to fire employees who signed union cards, informed an employee that he was being denied work opportunities because of his union activi-

[1] The principal docket entries are as follows: Charges filed herein by Donald Ray Denham, Dan W. Stevens, and Anthony Lupo against the Respondent in Cases 9–CA–28654 2,–3, respectively, on June 12, 1991; Charge filed by General Drivers, Warehousemen Helpers Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO, against the Respondent in Case 9–CA–28762, on July 18, 1991; consolidated complaint issued against the Respondent by the Acting Regional Director for Region 9, on July 23, 1991, and amended on August 14, 1991; Respondent's answer filed on August 7, 1991, and amended on August 26, 1991; Hearing held in Louisville, Kentucky, on December 2, 3, and 4, 1991; briefs were filed with me by the General Counsel and the Respondent on or before January 6, 1992.

[2] The Respondent admits, and I find, that it is a corporation which maintains an office and place of business at Clarksville, Indiana, and is engaged in the interstate transportation of freight by motor carrier. In the course and conduct of this business, it has performed services valued in excess of $50,000 in States other than Indiana. Accordingly, it is an employer engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act. The Union is a labor organization within the meaning of Sec. 2(5) of the Act.

ties, granted a wage increase and promised to designate a part-time driver as a full-time driver in order to dissuade employees from supporting the Union, and discharged Charging Parties Donald Ray Denham, Dan W. Stevens, and Anthony Lupo because of their union activities. The consolidated amended complaint also alleges that the Respondent failed to bargain in good faith with the majority representative of its employees. The Respondent denies the commission of any independent violations of Section 8(a)(1) of the Act, asserts that Denham, Stevens, and Lupo were discharged for job related deficiencies, including a failure to make themselves available for dispatch, and contends that it had no duty to bargain collectively with the Union since, at the time the Union made its demand for recognition, the Union did not represent a majority of the Respondent's employees in an appropriate bargaining unit. On these contentions the issues were joined.[3]

FINDINGS OF FACT

I. THE UNFAIR LABOR PRACTICES ALLEGED

The Respondent is a small family owned trucking company with a very short corporate history. It is owned by James J. Schroering (JE), its president, and his father, James J. Schroering Jr. (JJ), its vice president. It maintains a truck terminal on Old Potters Lane in Clarksville, Indiana, and an office on South Broadway in the same city.[4] Respondent has only one customer, the A. O. Smith Company of Milwaukee, Wisconsin. Utilizing trailers owned by the corporation and tractors rented from the Ryder Corporation, it has hauled automobile frames since early 1990 from the A. O. Smith plant in Milwaukee to the A. O. Smith plant in Corydon, a small town in southern Indiana located about 18 miles from Clarksville. After most of the events in this case took place, the Respondent began hauling automobile frames for A. O. Smith on another route running from Milwaukee to the O. A. Smith plant at Bellevue, Ohio, a city located in northern Ohio halfway between Toledo and Cleveland. Bellevue is about 300 miles from Clarksville.

Respondent's over-the-road drivers at Clarksville are dispatched by Leah Conrad, an admitted supervisor, who works at the South Broadway office but frequently takes calls at her home from drivers who are on the road. Her husband, Mark Conrad, is employed by the Respondent as a driver. Over-the-road drivers are compensated exclusively on a mileage basis, except for occasional payments they receive for so-called detention time, i.e., undue amounts of delay experienced while loading at the A. O. Smith plant in Milwaukee. Regardless of mileage actually driven, the number of miles for which they are paid on standard runs was set by A. O. Smith in its contract with the Respondent. As a motor carrier operating in interstate commerce, the Respondent is governed by administrative regulations issued by the U.S. Department of Transportation (DOT). The regulations principally involved in this litigation are the DOT requirement that all over-the-road drivers maintain and turn in for audit detailed logbooks showing the amounts of time they spend in driving. These logs are required to permit government monitoring of two other DOT regulations, one which prohibits any over-the-road driver from operating a motor vehicle more than 70 hours in any 8-day span and another which requires that every such driver take a rest period of at least 8 consecutive hours after any 10-hour stretch of driving.

The Respondent is obligated to make a truck available for loading at the A. O. Smith plant in Milwaukee at scheduled hours throughout each day, Monday through Friday. On rare occasions, loadings have taken place on Saturday or Sunday but, since A. O. Smith is a unionized plant, such activity on its part requires the payment of overtime and is therefore discouraged. Like many suppliers in the automobile industry, A. Smith operates on a ''just in time'' basis. ''Just in time'' means that deliveries of parts and equipment to major automakers are made ''just in time'' for use in the final assembly, thereby saving the automaker the cost of large inventories. The ''just in time'' program puts pressure on suppliers and deliverymen to make prompt pickups and immediate deliveries. Scheduled pickup times each weekday in Milwaukee were at 9 a.m., 1 p.m., 5 p.m., 9 p.m., and occasionally at 11 p.m. To meet this schedule, the Respondent organized four or five teams of drivers who make runs from southern Indiana to Milwaukee in a relay system known as slip seating. A driver leaves the terminal at Clarksville, drives 385 miles to Milwaukee, and waits to be loaded. He then returns to the A. O. Smith plant at Corydon, a trip of about 415 miles, unloads, and returns his truck to the Ryder terminal in Clarksville, where the truck is gassed up and made ready for a return run. The returning driver then takes the truck to the Respondent's terminal, about a mile from the Ryder location, where his partner slip seats, i.e., takes over for an immediate return to Milwaukee and a repeat of the same scenario.

Normally drivers do two or three runs a week. There have been instances where drivers have made four round trips in a single week and frequent instances where drivers have made back-to-back runs, without any rest interval at home. The time it takes for a round trip has been estimated at from 19 to 25 hours, depending on the very flexible amounts of time spent in loading at Milwaukee and unloading at Corydon. Normal running time is about 7–l/2 to 8 hours in each direction. However, there are variables, such as weather, traffic in and about Chicago, and breakdowns which can extend that time.

The Respondent has an agreement with the A. O. Smith Company that the latter will reimburse the Respondent, at the rate of $7.50 an hour, for any delays, known as detention time, in excess of 2 hours experienced by a driver while loading at Milwaukee,[5] but the Respondent, fearing to antagonize its only customer, had been reluctant until recently to press A. O. Smith for detention payments. The Respondent's individual agreements with its drivers provide that unless it is reimbursed by the customer for detention time, the

[3] Certain errors in the transcript are noted and corrected.

[4] Clarksville is actually part of the metropolitan Louisville area and is located on the north side of the Ohio River just a few minutes' drive from downtown Louisville.

[5] In the customer's yard in Milwaukee, A. O. Smith employees are responsible for stacking auto frames on the trailer of the Respondent's vehicle. The Respondent's drivers are responsible for chaining down the frames onto the trailer and for drawing the canvas curtains along the sides of the trailer which serve to enclose the load. At Corydon, a return trip is occasionally delayed because a driver is called on to load and secure baskets or crates which have accumulated at Corydon and which must be returned to Milwaukee.

driver will not receive any money for excessive time lost in loading. However, after the events in this case arose, the Respondent altered its policy and began to pay detention time when claimed by a driver, regardless of whether the claim had been reimbursed by its customer. Throughout the course of a trip, a driver is required to call in to Leah Conrad at various intervals to let her know where he is and when he may be expected to return to Clarksville so that she can alert his slip seat partner as to when to be available for a return run to Milwaukee. While there is a dispute in the record between employee and management witnesses, I conclude that it is virtually impossible to execute a round trip between Clarksville and Milwaukee in the time allotted by the Respondent and still comply with DOT regulations, except for the first run of the week, when a driver can leave southern Indiana at an hour chosen by him, arrive in Milwaukee in time to take 8 consecutive hours of rest before being loaded, and thereafter directly return to Corydon. I further conclude that few drivers did in fact make this round trip in full compliance with DOT regulations, except for the first round trip of the week. Several drivers testified credibly that it was their regular practice to falsify log cards to conceal the fact that they were running illegally. I further conclude that the Respondent was well aware of this practice and not only condoned it but virtually insisted on it in order to cut the corners which had to be cut to complete the runs the Respondent had to make with the limited number of drivers and trailers it was employing.[6]

An effort to organize the Respondent's employees began in the first week in May when discriminatee Donald Ray Denham contacted Union Business Agent Jerry Shaw in Louisville and told him that the Respondent's employees were interested in unionizing. Denham was, at that time, the Respondent's senior driver, having started to work on February 6, 1990, not long after the Respondent commenced operation.[7] Denham obtained union authorization cards and began disseminating them among company drivers in various ways. The Company's over-the-road drivers rarely congregated in a single place so it was necessary to distribute and collect cards by leaving them in private pickup trucks, at drivers' homes, or during casual encounters along interstate 65, the principal route used on trips to and from Milwaukee. A total of eight authorization cards were signed by company drivers on or before May 19.[8] Denham gave several cards to Glisson for distribution among drivers who lived on the Indiana side of the Ohio River. He personally gave cards to Starcher, Stevens, and Longoria. He collected a signed card from Stevens and gave it and other cards to Lupo to be turned in to the Union.

One of the cards was given to Mark Conrad, the husband of Leah Conrad. Leah Conrad informed JE that cards were being distributed and also told him that Denham was involved with the Union. Mark Conrad was one of three drivers in the bargaining unit who did not execute a card. JJ testified that he had learned from an employee of Ryder that union cards were being distributed among company drivers and had passed this information along to his son. About a week after signing a card on May 10, Lupo had occasion to call Leah Conrad on a business related matter. During the conversation, Leah Conrad told Lupo that company management was aware that union cards were being distributed and, if Lupo knew what was good for him, he would stay away from those who were involved in this effort. On or about May 18, Hogan visited the Conrad home to pick up his paycheck. Both Conrads were present. Mark Conrad asked Hogan what he thought about the passing out of union cards and whether he was going to join. Leah Conrad then entered the conversation to say that she would hate to see Mark join the Union because, if he did, he would have to find another job, adding that, ''if the Union got in . . . Q-1 could not stand union pressure.''

When Denham arrived at the Ryder truckstop in Clarksville on the afternoon of May 17 to gas up his truck, he was met by JE. I credit Denham's testimony relating to his conversation with JE. It was corroborated in part by Lupo, who heard part of the conversation while he was in the area gassing up his own truck. JE told Denham that he had already talked with Homer Longoria and that he knew that Denham was the one who was passing out union cards. JE also told

[6] Drivers' logs regularly failed to match the time entered on the Respondent's dispatch sheets and on the trip tickets turned into Ryder at the end of each trip. In September 1990, driver James Hogan had a discussion about illegal logs in the company office with JE. He asked JE how he could be expected to turn in a legal log ''when you run me illegal?'' JE simply replied, ''You can be easily replaced.'' Former driver Homer Longoria testified credibly that at his hiring-in interview JE told him that he knew that drivers could not make any money if they ''ran legal'' and the Company could not make any money either under those circumstances, so all that JE asked was that drivers turn in logs that appeared to be legal. Longoria followed that advice, keeping two sets of logs on his trips, one which reflected his actual time on the road and the other which reported time on the road which complied with DOT regulations. Early in Stevens' career as a driver, he complained to JE about the difficulty he was experiencing in keeping accurate logs which were also legal logs. JE told Stevens that if he wanted to keep two sets of logs he could do 80 adding that there were plenty of logbooks in the company office. He also told Stevens that, if he did not want to do so he could look for another job. JE said on that occasion that drivers were the least valuable asset the Company had and could be replaced as easily as a tire on a truck.

[7] Respondent insists that it does not observe seniority. Driver Shirley ''Tex'' Glisson testified that the Respondent observes seniority when it serves the Respondent's purpose to do so. The Respondent did post and maintain at the company office a list of drivers arranged in order of date of hire. The list was not entitled ''seniority list'' but was referred to as such. I credit testimony in the record that the Respondent did observe seniority in practice when it made dispatches. The parties agree that the Respondent did not observe the practice of '' forced dispatches.'' Drivers were free to turn down a run which was offered them and they often did. In such instances, the dispatcher offered the open run to the next available driver on the seniority list. The name of discriminatee Anthony Lupo appeared on the list as a casual driver. He was actually a regular part-time driver and was dispatched at least once each week. Often he received more assignments, filling in for regular drivers who were ill or on vacation. The principal distinction between so-called regular drivers and casual drivers was not the number of hours worked in a given week but simply that those who enjoyed regular status received health insurance benefits after 90 days of employment and those denominated as casuals did not.

[8] The record contains authorization cards signed by Denham, Glisson, Lupo, Stevens, Martin E. Suddeth, Todd E. Tomes, and Hogan. Homer Longoria testified credibly that he executed an authorization card sometime before the company meeting which was held on May 19. However, his card was misplaced and was not offered.

Denham that he had spoken with his attorney and learned that he would have to fire all the drivers, something he did not want to do because it would mean losing people like Mark Conrad and Jim Logsdon, but he would have to do 80 in order to close the Company down and reopen it. He told Denham he would fire all the drivers and hire all new drivers and could do so within 72 hours. Denham replied simply that he was tired and did not want to argue; he just wanted to go home. JE persisted, telling Denham that he would not permit ''no half-ass union to come in and try to tell him how to run his business'' and before he would let this happen, he would ''close the doors first and open up under a new name.'' JE also said that he felt that the drivers had betrayed him and informed Denham that he had called Denham's previous employer and learned that Denham had been a member of the Teamsters Union for 10 years. He further informed Denham that he was holding a drivers' meeting the following Sunday at 5 p.m. and knew that the drivers themselves were planning to hold their own meeting an hour earlier. He said he had considered attending the drivers' meeting but had changed his mind, adding, ''You all go ahead and have your meeting, and then, when you come down, we'll have our meeting.''

On the same afternoon, JE phoned Sandra Longoria, the wife of driver Homer Longoria, who was out of town on a run to Milwaukee.[9] JE began to ask Sandra Longoria, who suffers from a chronic intestinal disorder known as ''Crohn's Disease,'' about the organizing drive. He told her that all the men were talking about the Union and wanted to find out what she knew about it. Sandra Longoria replied that her husband had said something about the Union but she did not know what it was all about. She then asked JE whether he was calling the wives of the other drivers. JE replied that in fact he was but refused to tell her which wives he was calling. He then told her that her husband was up to his knees in Union business and had really gotten himself ''in a fix.'' Sandra Longoria asked JE ''What do you mean?'' and accused him of making an unethical phone call. JE went on to remind her that when her husband had been in an accident the previous October the Company had kept him on the payroll even though another trucking company would not have done so. He added that the Company would now have to rethink its position. She objected, saying, ''I cannot believe that you are making this phone call.'' JE replied that he wanted to find out about ''this Union business'' and why the men were so upset. Sandra Longoria replied that one reason was that the Company was not paying detention pay. They argued, JE saying that the men were receiving all the detention pay they were entitled to receive and Sandra Longoria disagreeing. She then accused him of making promises to drivers that he had no intention of keeping and suggested that this was why the drivers were upset. Sandra Longoria then asked JE whether his father knew that he was making this phone call. When he replied that JJ did not know about it, she then asked JE for his father's phone number. She told JE that she did not take kindly to the fact that he had called her, knowing that her husband was out of town, and that he had tried to pump her for information. She then hung up.

Having become upset, Sandra Longoria began to suffer an attack of her longterm illness. After calming down, she called JJ, told him the substance of the conversation she had with his son, and objected to his son's behavior. JJ replied that ''we don't do business like that'' and insisted that his son had not in fact made the phone call. She replied that the maker of the phone call was his son, pointing out that the caller had identified himself as such, and that he knew a great deal about Longoria's work history and record as an employee. JJ's response was that this information was all in the company computer and anyone could have obtained it from that source. He also told her that the Company had no problem with the unionization of its employees and suggested that possibly a union representative had made the phone call about which she was complaining and was trying to put the blame for it on the Company. He then said he would get a court order to have everyone's phone tapped in order to get to the bottom of the question and cautioned her to be careful about making accusations such as the ones she had just made. He asked her to have her husband call him.

Sandra Longoria reported this conversation to her husband when he phoned her while he was out on his run. On returning to Clarksville about midnight, Longoria phoned JE and angrily complained about the call to his wife. He told JE that the latter had no business involving members of his family in company business and informed him that his wife's health was precarious, and complained to him that incidents involving stress served only to bring on renewed attacks. JE replied that he did not know much about the Union and was also unaware that Sandra Longoria suffered from Crohn's Disease. He went on to say that he and his father had started the Company, had taken all of the risks incident to opening a new business, and that he was not going to let the Teamsters come in and destroy everything they had done. He mentioned to Longoria that the Schroerings owned a sister company and that he could turn Q-1 over to the sister company.

The following morning, Longoria went to the company office and spoke with JJ. Again he voiced a strong objection to what had transpired the day before. He told JJ he was sure that it was JE who had made the call since he had stated things to his wife concerning Longoria's work record that only JE would know. He insisted that JJ call his wife and apologize. JJ did so in Longoria's presence.[10]

At or about this same point in time, JE had occasion to speak about the Union to Hogan. He told Hogan that he might have to shut the Company down and start it over because the Union would break him.

Two meetings took place on Sunday afternoon, May 19. Eight drivers met informally in a group at the Union-76 truckstop on I-65 at Hamburg, Indiana, a few miles north of Clarksville.[11] At that point, Denham told the group that he had in hand authorization cards signed by a majority of the

[9] I credit the straightforward testimony of both Longorias. Homer Longoria is no longer employed by the Respondent, having found employment driving for another motor carrier. Neither of them would have any personal motive for exaggerating or falsifying their testimony.

[10] While the Schroerings persisted for awhile with the contention that JE had never phoned Sandra Longoria and that the caller must have been someone else, on the following Sunday evening, following the company meeting with the drivers, JE spoke to Longoria privately and apologized for the call.

[11] Those attending the drivers' meeting were Tomes, Glisson, Longoria, Suddeth, Stevens, Denham, Hogan, and Howard ''Pappy'' Starcher.

employees and said that he had contacted the Teamsters to tell that ''we had elected Local 89 as the bargaining representative.'' Reference was then made to a want-ad for drivers which had appeared the same day in the Louisville *Courier-Journal*. The ad read:

> Drivers
> Q-1 Motor Express
> is now Hiring. Offering
> —23 cents per mile
> —2300 miles per week
> —late model conventionals
> —home every other day
> —vacation pay & company health insurance
> For more information call Bo Schroering 288–1121

Stevens wondered aloud why they were advertising for more drivers when they were reluctant to put Lupo on full-time and suggested that the ad was just a scare tactic. The drivers rehashed among themselves certain standing grievances, such as the failure of the Company to pay detention pay and its continuing failure to raise the mileage payment from 23 to 24 cents a mile. The suggestion was made that they should not even attend the forthcoming company meeting and should simply elect a spokesman to attend on their behalf. They finally decided to attend the company meeting but elected Longoria to speak at the company meeting on their behalf.[12]

The company meeting began at 5 p.m at the company terminal. Both Schroerings, their new vice president for finance, Joseph Smith,[13] and Leah Conrad attended for the Company. All the drivers were present except Lupo, Hogan, and Logsdon. JJ opened the meeting by stating that he knew that some ''little green cards''[14] were being circulated but the Company would ''address that issue whenever the time comes.'' He went on to say that the employees at the A. O. Smith plant in Milwaukee were represented by a union and that a ''majority of our problems was because of them being in the union.'' JJ mentioned that he had worked for the Ford Motor Company for about 30 years and had seen where the union at Ford had caused problems with production and slowed the plant down.

JE then addressed the drivers. Among other things, he told them that business was picking up and that the Company would be starting a new run from the A. O. Smith plant in Milwaukee to its plant in Bellevue, Ohio. He mentioned that wages would be increased from 23 to 24 cents a mile because of improved gasoline mileage which drivers had been able to achieve, namely, operating vehicles at 6.3 miles per gallon, and he mentioned that if drivers could achieve 6.8 miles per gallon, they would get another penny on their mileage. However, he told them that the implementation of raises would be delayed until the anniversary date of each driver because he felt that seniority was one of a drivers' most valuable assets.

Denham brought up the question that drivers were unable to get a full 8 hours' rest after driving a 10-hour stint. JE cut him off, saying that they had discussed this matter at earlier meetings and he was not going to discuss it again. His concluding words to Denham were ''you know how you have to run.'' Longoria, who was acting as a spokesman for several drivers, brought up the fact that Tony Lupo wanted to be made a full-time driver. JE replied that making Lupo a full-time driver might cut in on hours available to other drivers but those in attendance indicated that they approved of the move. JE then said he would go ahead with it after consulting with the two drivers who were not at the meeting, told Leah Conrad to make a note of it, and promised to notify Lupo the following day. Toward the end of the meeting, Denham brought up the fact that insurance benefits were not being provided for Starcher. JE simply replied that Starcher was uninsurable.

After the formal meeting concluded, Denham, Longoria, Stevens, Tomes, and Glisson met together briefly in the back room. Glisson voiced the opinion that the drivers had not accomplished anything. Outside the terminal building, Stevens asked Denham to turn in his union card along with the others. Denham made arrangements later with Lupo to deliver the cards to the Union, but the record does not reflect when this was done.

A week later, on May 28, Denham received a phone call from JE, telling him that the Company no longer needed his services and that he would be getting a letter from an attorney giving the reasons. JE did in fact consult with counsel before discharging Denham. Denham went to the company office to pick up his paycheck. Inside the envelope with the check was the letter which was to be sent to him by the Respondent's attorney, I. Joel Frockt. It read:

> This office represents Q-l Motor Express, Inc., your employer. At this time, Mr. James E. Schroering has come in to review your file with us.
>
> This review reveals that:
>
> 1) April 2, 1990—You were given an oral warning a written record of which is in your file, that your log records were not in order and you were admonished at that time to review your procedures and told that further indiscretions would not be tolerated.
>
> 2) May 3, 1990—Again, your log records were not properly kept, you were told in a written warning that it was your last warning and that further indiscretions would not be tolerated.
>
> 3) February 6, 1991—You were given a written warning for having backed into a fixed object while driving a company leased vehicle and tore the trailer's curtain in half. You were further told that this was a serious matter and that the cost to the Company was in excess of $2,000.
>
> 4) January 15, 1991—You were given an oral warning, a record of which is contained in your file, regarding your drifting off the road surface on I-65 in central Indiana. It was apparent that you were in danger of falling asleep at the wheel or that you had some other problem which affected your ability to control your vehicle in a safe and efficient manner. The Company was

[12] It was at the drivers' meeting that Stevens signed a union authorization card. He laid it on the hood of a truck while he was filling it out. Because of his interest in what was being said by other drivers, he forgot to sign his name at the bottom, although he filled in all the other items in his own handwriting.

[13] Smith is an in-law of the Schroerings and an admitted supervisor.

[14] JJ admitted in his testimony that, by ''little green cards,'' he meant union cards.

aware that you were working outside of Company hours on a farm and advised you were to operate your vehicle in a safe manner. You have also been spoken to on several occasions although not formally warned about coming to work tired and not ready to drive your assignment.

5) March 28, 1991—A review of your January 1991 logs provided information that you committed nine log violations in spite of all previous meetings. You were therefore given a three-day suspension and told that the behavior was unacceptable.

6) May 25, 1991—You were dispatched on a return run from Milwaukee to Corydon, Indiana at 14:30 central daylight time, a trip which takes an average of eight hours. As of 10:30 am this date, youstill have not called into the dispatch office. This is nineteen hours from the time you were dispatched.

7) May 25, 1991—It has come to the attention of the Company that you received a traffic violation in the State of Indiana within the recent past. A review of your log records indicates that this violation has not been logged in violation of Indiana regulation and Company policy.

Because of your poor work record, itemized above, and because of recent violations which have occurred, the Company is left with no choice other than to terminate you at this time. The effective date of your termination is May 25, 1991, upon your return to the Company premises.

The weekend following the company meeting of May 19 was Memorial Day weekend and no pickups were scheduled in Milwaukee because the A. O. Smith plant was closed. As a result, the truck driven in relay by Stevens and Glisson would be making only four round trips that week. These trips were scheduled from Tuesday through Friday. Glisson and Stevens agreed that Glisson would make the Tuesday and Thursday pickups and that Stevens would have to be ready to drive from Clarksville to Milwaukee sometime Tuesday evening. Leah Conrad was informed of their agreement and approved. Stevens told her that he was going j take a weekend at a lake resort, to which she said: ''Have a nice holiday.''[15]

Before leaving the office, Stevens went into JE's office to pick up his paycheck. Before giving him the check, JE asked him to sit down and talk. JE began the conversation by telling Stevens that he had talked with the Company's health insurance carrier and said that they would have to pay for fixing Stevens' teeth, which needed attention as a result of an injury he had sustained. JE's only comment on that subject was, ''I have no argument against that [the payment]. If you hurt yourself, you hurt yourself.'' He then went on to say to Stevens, ''You know, I thought I had better friends in this Company amongst the drivers than what's turned out to be. I know everybody that signed a Union card. If it takes firing everybody to keep the Union out of here, then that's what I'll do. I'm not going to have Local 89 coming in here telling me what I can and can't do with my own company.'' Stevens replied, ''Oh, yeah!'' or something to that effect. He picked up his paycheck and left.

On the following Sunday morning, Leah Conrad called the home of Stevens' mother in order to get in contact with him. Mrs. Stevens notified her son of the call and he returned the call immediately over the Company's 800 line.[16] Stevens asked Leah Conrad what was the matter and she said ''Nothing. I thought I was going to need you for a run but don't worry about it. I got it covered.'' Stevens ended the conversation by saying, ''I'll talk to you Tuesday night.''

Stevens returned to Clarksville on Monday evening and was home during the following day. He estimated that Glisson would be back to Corydon about 10 p.m. or thereabout on Tuesday evening so he phoned Leah Conrad to inquire. She replied that Glisson had not yet arrived in Corydon, in which Stevens asked her if she wanted him to call back or whether she would notify him upon Glisson's arrival. Her reply was, ''Well Tex [Glisson] didn't make the run. We sent another driver to make the run.''[17] Stevens was angry and asked her ''What the hell's going on? Why wasn't I offered the run?'' Her reply was that it was a ''management decision.'' She refused to tell Stevens whom she put on the run and suggested that he take up the question with JE the following morning.

On Wednesday morning, May 29, Stevens called JE and asked him why the Company sent out another driver when he was available to take the run. JE replied, ''We didn't know where you was.'' Stevens told JE that he had told Leah Conrad the previous Friday where he was going to be and also informed him that she had called him on Sunday. Stevens repeated that Leah Conrad knew where he was but JE said she had not said anything to him about the call, adding that ''we thought you might be in New Orleans.''[18] Stevens then said, ''Jim, do you think I would go eight hundred miles away from my job without notifying the Company. If I had been going to New Orleans, I would have said so.'' With this exchange, JE just hung up on Stevens.

On Wednesday evening, May 29, about 10 p.m. or so, when Stevens suspected that Glisson would be back in Corydon from a run to Milwaukee, Stevens called Leah Conrad and asked her if he was scheduled to go out. She replied hesitatingly that Glisson had not yet returned and that ''you probably won't work this week because they've got some loads off for the end of the week.'' Stevens replied that if such were the case he would start some long-postponed root canal work. He told Leah Conrad he would talk with her the following Sunday or Monday night.

On Sunday night, about 9:30 p.m., he called JE at his home. He complained that he had lost a week's work because of a lack of communication between Leah Conrad, JE, and himself and stated emphatically that he did not want it to happen again. He told JE ''I'm letting you know right this minute on Sunday night that I am available for dispatch right now.'' JE replied, ''Well, just call me tomorrow. I really

[15] Stevens spent the weekend at Rough River Reservoir, about 75 miles south of Louisville.

[16] Leah Conrad admits receiving this call. To the extent that her testimony conflicts with that given by Stevens, I discredit her.

[17] During the 10-day period immediately following the drivers meeting on May 19, the Respondent hired four new drivers—Don Redden on May 21, Bill Torres on May 22, and Brent Mathews, and Bob Long on May 28.

[18] On various occasions during his tenure with the Respondent, Stevens had gone to New Orleans to attend to personal business.

don't like to discuss business after hours.'' He phoned the office the following morning about 10 a.m. and was told that JE had not arrived. He called an hour later and informed JJ, who answered the phone, that he was available for dispatch. JJ replied, ''I'm not going to send you back out in the truck until you, me and Leah [Conrad] sit down and discuss what happened last week.'' He said that he would be busy the rest of the day and suggested that Stevens call him the following morning.

Stevens called the office the following morning to speak with JE. He was told by Smith that both JE and JJ left for Milwaukee. Stevens asked Smith if he was aware that they had scheduled a meeting with him and that he was not to be dispatched until the meeting took place. Smith simply replied that the business trip to Milwaukee came about suddenly and it probably slipped their minds.

The following day, Stevens went personally to the office and spoke with Leah Conrad. He asked her whether he was laid off, suspended, or fired. She simply replied that she had no idea because they had not said anything about it. She referred him to Smith. He posed the same question to Smith and Smith replied that he had no idea either. His only instructions were that Stevens was not to be sent back out on the road until a meeting took place involving the Schroerings, Stevens, and Leah Conrad.

On returning home, Stevens received a termination letter in the mail signed by JE which was dated May 30, nearly a week before. It was written in the form of a memo and read:

> Driver: Dan Stevens
> Subject: Termination of Employment
>
> This letter is to inform you that your employment at Q-l Motor Express, Inc., Clarksville, Indiana, is terminated on this date, May 30, 1991. You have (3) three previous letters in your employee file:
>
> Oral warning—Oct. 25, 1990
> Written warning— Feb. 7, 1991
> Suspension—April 25, 1991
>
> On 5/26/91, Q-l Operations Manager Leah Conrad tried to contact you for dispatch reasons. You were unavailable for work. Please note the attached letter to J.E. Schroering from Leah Conrad dated 5/28/91.
>
> The letter from L. Conrad is self explanatory. You were to be available for dispatch and you made yourself unavailable. You had an explanation for your absence, but the excuse has been determined to be invalid. You are effectively terminated as of May 30, 1991.

The letter contained an enclosure which read:

> To: J. E. Schroering, President
> From: Leah Conrad, Operations Manager
> Date: 5/28/91
>
> Please be advised that upon contacting Dan Stevens on 5/26/91 and 5/27/91 that he was unavailable for dispatch on Tuesday 5/28/91. Dan telephoned me on 5/27/91 and stated that he was out of town and would not be available until Tuesday night. As you know, this is not the first time Dan has done this.

Lupo came to work for the Respondent in November 1990. He was variously described as a casual or a regular part-time driver. He drove anywhere from 24 to 72 hours each week and was driving almost as many hours as so-called full-time drivers during the final weeks of his employment with the Respondent. He signed a union card on or about May 10 and was the one whom Denham asked to deliver signed cards to the union office in Louisville. As noted above, he was the recipient of a warning from Leah Conrad to stay away from those who were passing out cards among the Respondent's employees.

Lupo did not attend the company meeting of drivers on May 19 when his status as regular full-time driver was discussed. Two days later, he had occasion to discuss his status with Leah Conrad. She informed him that he would be receiving a letter from the Company informing him that he would not be made a full-time driver but she advised him to ignore the letter. She told Lupo that JE was mad about the fact that Lupo had called in and made himself unavailable for assignment on or about May 22 and told him that it would all ''blow over.''

On May 28, Lupo received in the mail a memo from JE dated May 23. It read:

> Mr. Lupo, you have been employed by this company for several months now as a ''casual'' employee. Our work level has not justified that you be added to the permanent ''driver list'' but you have been working quite a bit due to driver illness and vacations. The drivers have mentioned that they would like to see you become ''permanent,'' but this will not be the case in the near future.
>
> On Wednesday, May 22, 1991, you called Operations Manager, Leah Conrad, at approximately 05:00 hours and informed her that you were unavailable for dispatch because you had been out all night. You also mentioned that you consumed an amount of alcohol that would make you unavailable for dispatch. This is the second time that this has happened since you began working for Q-l Motor Express, Inc., as a ''casual'' employee.
>
> We have also experienced some problems with your overall dispatch behavior. Until these behavior inconsistencies are corrected, you will not be considered for full-time status. Operations Manager, Leah Conrad, and myself will re-evaluate your personal situation again in (90) ninety days.

Lupo went to the office the following day and complained to JE about the letter. Lupo objected that he had never said anything to Leah Conrad about alcohol or partying when he told her that he would be unavailable for dispatch on May 22. JE replied that Leah Conrad had never lied to him but told Lupo to disregard the letter. He assured Lupo that he was still on the driver's board and said that he had written the letter just ''to cover my butt.''

Lupo continued to be dispatched but noticed that three drivers who had recently been hired were taking more runs than he was receiving. On June 10, he called JE to complain about these assignments. JE's reply was to say that the Respondent was not a union company, that he ran the boat, and, if he were Lupo, he would not worry about it because Lupo

was on his way out. With those words as a concluding salutation, JE slammed down the phone. Lupo did not work after that date. His last run to Milwaukee had been completed on June 9. On June 12, he and the other two discriminatees in this case filed individual charges with the Board. Lupo delayed turning in the bill of lading on his final run and was contacted by company officials to do so in order to permit them to bill their customer. He did so on or about June 1 when he came to the office to pick up his paycheck. On June 21, JE sent Lupo a telegram, which read:

> We have attempted to reach you daily beginning 6–7–91 through 6–17–91. No response. Again, on 6–18–91, through 6–21–91 daily attempts were made with no response. Effective this date, 6–21, you are being removed from the casual driver list for absenting yourself during this period. You are hereby requested to return to the Q-l Motor Express any company equipment in your possession as of this date.

On or about July 18, 1991, the Union wrote to the Respondent to demand recognition. The Respondent did not reply. In the fall of 1991, after the consolidated complaint in this case had been issued and additional drivers had been hired, JE had occasion to speak with Hogan in the parking lot near the office. JE told Hogan that all he wanted was an election and asked Hogan to pass the word that an election was all he really wanted. He went on to suggest to Hogan that the latter would not like working for a union company because unionization would mean ''forced dispatch.''

II. ANALYSIS AND CONCLUSIONS

The Independent Violations of Section 8(a)(1) of the Act

(a) When Leah Conrad informed JE, in response to information brought to her by her husband, a bargaining unit member, that union cards were being distributed and that Denham was involved with the distribution, the Respondent engaged in surveillance of the union activities of employees in violation of Section 8(a)(1) of the Act.

(b) When Leah Conrad told Lupo in the course of a telephone conversation that management was aware that union cards were being distributed and Lupo should stay away from those who were involved if he knew what was good for him, the Respondent created in the minds of employees the impression that their union activities were the subject of company surveillance and also threatened employees with unstated reprisals for engaging in union activities in violation of Section 8(a)(1) of the Act.

(c) When Leah Conrad told Hogan, in the presence of her husband, that she would hate to see her husband join the Union because he would have to find another job, the Respondent was guilty of an implied threat that it would discharge employees in reprisal for union activities in violation of Section 8(a)(1) of the Act.

(d) When JE told Denham that he had talked with Homer Longoria and had learned that Denham was the one who was passing out union cards, the Respondent was guilty of creating in the minds of employees the impression that their union activities were the subject of company surveillance in violation of Section 8(a)(1) of the Act.

(e) When JE told Denham that the Company would have to fire its drivers, close the Company down, and hire all new drivers, the Respondent engaged in an unlawful threat of reprisal for engaging in union activities in violation of Section 8(a)(1) of the Act.

(f) When JE persisted, telling Denham that no ''half-ass union'' would come in and tell him how to run his business and that he would close the doors and open under a new name, the Respondent again made an unlawful threat of reprisal for engaging in union activities in violation of Section 8(a)(1) of the Act.

(g) When JE told Denham that he had called Denham's previous employer and learned that Denham had been a member of the Teamsters Union for 10 years, JE created the impression that Denham's union activities were the subject of company surveillance and admitted engaging in an act of illegal surveillance, all in violation of Section 8(a)(1) of the Act.

(h) When JE phoned Sandra Longoria, stated that all the men were talking about union organization, and asked her what she knew, he was creating in the minds of employees the impression that union activities were the subject of surveillance and was engaging in coercive interrogation concerning union activities. It is true that Sandra Longoria was not an employee of the Respondent and did not personally enjoy the protections of the Act. However, the action of the Respondent in this instance was of such a character that it must have known that the contents of the phone conversation with the wife of an employee would soon be communicated to the employee himself, as indeed it was, bringing about, as it did, an immediate and angry reaction. Accordingly, the Respondent, by these actions, violated Section 8(a)(1) of the Act.

(i) When JE told Sandra Longoria that her husband had gotten himself ''in a fix'' because of his union activities and went on to suggest that it might take an adverse personnel action against him because of an old accident, he threatened an employee with discharge for engaging in union activities in violation of Section 8(a)(1) of the Act.

(j) When JE told Longoria that he was not going to let the Teamsters come in and destroy everything he and his father had built and that he could turn Q-l over to a sister company, the Respondent threatened to close the plant in response to union activities in violation of Section 8(a)(1) of the Act.

(k) When JE told Hogan that unionization would bring a policy of forced dispatch into the Company, he was threatening employees with more onerous terms and conditions of employment in reprisal for union activities in violation of Section 8(a)(1) of the Act.

(l) When the Respondent awarded employees a pay raise of 1-cent per mile to dissuade them from engaging in union activities, it was making an illegal promise of benefit which violated Section 8(a)(1) of the Act. Pressure had been put on the Respondent for several months to grant an increase in the mileage rate from 23 to 24 cents a mile, but had been resisted on the claim that gasoline mileage had been insufficent to permit the increase. On May 1, JE sent a memo to drivers thanking them for operating their vehicles with increased fuel economy. He said he would continue to monitor the situation and, if the trend continued, ''I will be giving serious consideration to raises in compensation.'' Three weeks later, he announced the increase. However, between the May 1 letter

and the May 19 announcement, there is nothing in this record to suggest any reason for the granting of the long-promised increase except the onset of union activities. There is no objective data comparing gas mileage on May 1 to gas mileage on May 19 which would support JE's statement at the May 19 drivers meeting that gas mileage had suddenly improved to the point where an increase of 1 cent per mile was warranted. On the contrary, there is a great deal of evidence in the record of company animus and illegal activity designed to stifle the unionization of the terminal. This animus, taken together with the timing of the announcement, makes it clear that the modest pay increase was offered for illegal reasons and was therefore a violation of the Act.

(m) The consolidated complaint alleges that the Respondent also made an illegal promise of benefit when, at the meeting of May 19, JE agreed to put Lupo on the drivers list as a regular full-time employee, subject only to the approval of two drivers who had not attended the meeting. Lupo had been an employee of the Respondent for several months and had recently been receiving a full share of dispatches, largely because of vacations, illnesses, and other absences by regular drivers. He had been pressing the Respondent for several months to become a full-time driver, since this status would entitle him to health insurance benefits. Each time he made a request he had been rebuffed and given, as a response, the equivalent of ''later.'' At the drivers meeting, however, JE agreed to this request and instructed Leah Conrad to make a note of it. He went so far as to promise to notify Lupo of his decision the following day, subject to the qualification noted before. The fact that JE reneged on this promise within a matter of days does not detract from the fact that he made it. It also illustrates a willingness to adjust a grievance in response to an employee complaint, even though his advertised willingness was insincere. By promising to install Lupo to permanent driver status at a time when the Respondent was making both threats and promises aimed at heading off the unionization of the Company and, by doing so for antiunion reasons, the Respondent violated Section 8(a)(1) of the Act.

(n) Late in May during a conversation that took place in his office, JE told Stevens that he knew the identities of everyone who had signed a union card. This statement constitutes another instance of creating in the minds of employees the impression that their union activities were the subject of company surveillance and is a violation of Section 8(a)(1) of the Act.

(o) JE's statement to Stevens on the same occasion that he would be willing to fire all of his employees if that is what it took to keep the Union out of the Company is an illegal threat of reprisal which violates Section 8(a)(1) of the Act.

(p) JE told Lupo on June 10 during the course of a phone call that the Company was not a union company and if he were Lupo he would not worry about missing out on dispatches since Lupo was on the way out is a threat to discharge an employee for union activities which violates Section 8(a)(1) of the Act.

(q) JE's statement to Hogan in the fall of 1991 that the unionization of the plant would bring about forced dispatches is a threat to impose upon employees more onerous working conditions in repisal for union activities and is a violation of Section 8(a)(1) of the Act.

The Discharges of Denham, Stevens, and Lupo

The discharges of Denham, Stevens, and Lupo, all of which took place within 3 weeks of each other, were accomplished by an employer who, by its statement, had never before discharged anyone and who had sought legal advice before doing so. The discharges were accomplished against a background of intense antiunion animus, just shortly after the onset of an organizing drive, by an employer who had repeatedly threatened to fire all of its drivers if that is what it took to defeat the organization of its company. These is charges also contain other common threads. All three discharges were justified by a string of stale complaints about the job performances of the affected drivers. They were evidenced by a series of written reprimands which none of the drivers had ever seen before they were confronted with them, months later, in the course of a U.S. district court hearing in Indianapolis in October 1991.[19] In all three instances the discharged employees had signed union cards before being discharged and had been the subjects of 8(a)(1) statements by the Respondent's supervisors which were directed personally and individually at them. In the case of Denham, the discharge served to remove from the Respondent's payroll the leader of the organizing drive and a person whose leadership was well known to the Respondent. These common threads give rise to more than a mere suggestion that they were accomplished for discriminatory reasons.

I credit the testimony of Denham, Stevens, and Lupo that none of them had access to their respective personnel records and that none of them had actually received the written warnings relating to a score of misdeeds on which the Respondent relies to justify their respective discharges. Laying a paper trail to prepare a legal defense for an illegal action is hardly an unprecedented act on the part of an employer who is bent on defeating an organizing drive. See, for example, *Chopp & Co*., 295 NLRB 1058 (1989); *Lousiana-Pacific Corp*., 299 NLRB 16 (1990). The fact that JE sought legal advice before taking a routine step of discharging an erring employee suggests that he was plotting his course carefully from the outset. Moreover, the reliance on stale complaints—misconduct which was tolerated when it happened but which later became intolerable when unionization was taking place—is a solid indication that the discharge is being accomplished for a discriminatory motive[20] because it is motivation, not justification, that determines whether a discharge violates Section 8(a)(3) of the Act. *Family Foods*, 300 NLRB 649 (1990).

In the case of Denham, he was furnished with a seven-item bill of particulars justifying his discharge by the Respondent's attorney within a week after he solicited sufficient cards to provide the Union with majority status in the Respondent's bargaining unit. The letter was sent within days of Denham's action in speaking up at the drivers' meeting of May 19 to complain about certain company practices. Two of the items in the bill of particulars related to events which were more than a year old and pertained to improper driver's logs. The Respondent knew and indeed engendered

[19] Application for temporary injunction under Sec. 10(j) of the Act. *Bordone v. W-l hotor Express*, NA, 91–141–C, U.S. District Court for the Southern District of Indiana, New Albany Division.

[20] See *Goren Printing Co*., 284 NLRB 30, 34 (1987), and cases cited therein.

the standard practice among its drivers of keeping false and improper logs to cover up their ongoing practice of violating DOT driver safety regulations. Relying on such complaints to explain or justify a discharge is little short of hypocrisy. The February 6, 1991 item in the attorney's letter relating to a torn trailer curtain recites false information. The curtain in question was repaired by Denham and Suddeth and the tear cost the Company nothing. Moreover, curtain tears on company trailers are commonplace in the Respondent's operation. Torn curtains are routinely repaired and retained in service, as was the case with the torn curtain on Denham's truck. With regard to drifting off the road surface on I-65 in central Indiana on February 15, this is another example of a stale complaint. There is no proof, other than the Respondent's unworthy testimony, that any written record of an oral warning for this infraction was ever placed in Denham's file nor is there any credible evidence in the record to rebut Denham's testimony that he was not working outside company hours on a farm, as alleged in the discharge letter. As for the allegation, also set forth in the letter, that Denham was repeatedly warned for coming to work tired, to the extent this was so his fatigue was occasioned by the excessive number of hours, without required breaks, which he was required to drive in order to meet the Respondent's tight delivery schedule. The Respondent was well aware of this problem from several complaints which Denham had made, including one which he had recently voiced at the May 19 meeting, only to be put down by JE for even mentioning the topic.

Item 5 in the attorney's letter, a March 28, 1991, is a log violation for which Denham was given a suspension. This is another example of a complaint for activity which was routinely condoned and encouraged by the Respondent and hardly the basis for any discipline which might be administered evenhandedly. The suspension mentioned in the letter took place over a 3-day Easter holiday weekend when Denham and all the Respondent's other drivers were not scheduled to work, so any loss of pay which a suspension would normally bring about was never reflected in Denham's paycheck. Denham testified credibly that he never knew of the suspension until confronted on the stand at the U.S. district court hearing in October concerning the March discipline. The whole complaint was contrived and without merit, either as a basis or a motivating cause for discharge and is a further indication of the pretextual nature of the discharge.

Item 6—which apparently is the precipitating event which assertedly triggered Denham's discharge—recites that, on May 25, on a return run to Corydon, Indiana, from Milwaukee, Denham was on the road for 19 hours without calling the disptacher at stated intervals, as required by company practice. Denham testified that, during this run, he called in to the dispatcher at repeated intervals throughout the trip. I credit his testimony.

Item 7—Denham's failure to log a traffic violation in his report—falls within the same category as other log violations. In March, Denham promptly reported a traffic citation to the Respondent and was able to have it dismissed. The gravamen in this so-called disciplinary action was not that he failed to notify the Company of a traffic citation but that he failed to write it in his log as well. To rely on a trivial matter occurring in late March to justify a discharge in late May is another instance of a stale complaint justification as well as disparate treatment of Denham vis-a-vis other drivers who routinely engaged in falsification of logs.

In light of the factors outlined above—company animus, threats of discharge, and animus directed particularly to Denham, suspicious timing, Denham's conspicuous leadership in the union drive, and the flimsy, sometimes false, and thoroughly pretextual nature of the Respondent's proffered explanation—I conclude that the Respondent discharged Donald Ray Denham because of his membership in and activities on behalf of the Union and, in so doing, violated Section 8(a)(1) and (3) of the Act.

The discharge of Dan W. Stevens followed hard on the heels of Denham's termination. Stevens began working for the Respondent in August 1990 and, in the course of his employment, drove an estimated 80 or 85 round trips to Milwaukee from southern Indiana. His last day of work was May 30, 1991.

Stevens signed a card on May 19 at the meeting which the drivers held just before the company meeting. The following weekend he had a conversation with JE during which JE told Stevens that he knew the identities of everyone who had signed a card and expressed an opinion to Stevens that the drivers had betrayed him, complaining that he thought he had better friends than he did. There can be little doubt that JE was referring to Stevens when he made this remark.

What followed after this conversation was a runaround that led to the sending of a letter, dated May 30, which recited three previous disciplinary actions and stated that Stevens' excuse for making himself unavailable for dipatch on May 28 was invalid. In fact, Stevens was available for dispatch on that date and planned on taking a return trip to Milwaukee as soon as his slip-seat partner, Glisson, returned to Clarksville. In fact, on the evening of May 28, he was waiting for a call from the dispatcher and, when it did not come as expected, called Leah Conrad to learn that someone else had been sent out in his place. His response to this information was, ''What in the hell is going on?''

Three previous disciplinary actions noted in Stevens' memo of termination were either stale complaints or false recitations of the events which gave rise to characterizations of wrongdoing on his part. Stevens was involved in an accident of minor consequence on October 25, 1990, and, at the suggestion of JE, falsified some of the facts relating to the collision so that the Company's insurance company would not learn that Stevens had backed into a parked truck. JE told Stevens during the investigation of the accident that if he made the insurance company aware of his action the Company would have to fire him. For his complicity with JE in this scam, a reprimand appeared in Stevens' personnel file when the Respondent was attempting to building a case against him to justify his discharge.

The second reprimand, dated February 7, involved a blowout along the road which resulted in damage to the rim on one of the Respondent's trailers. The document accused Stevens of lying when he reported the blowout and exercising poor judgment in bringing the truck into the terminal for repair rather than calling first to find out whether he should bring it in. This stale complaint, like the October 25 reprimand, had been placed in Stevens file without his knowledge. Like Denham, he had no knowledge of these rep-

rimands until confronted with them in October at the U.S. district court hearing in Indianapolis in the 10(j) case.

The third reprimand recited a suspension on April 25 because of a false report concerning an accident suffered by Stevens during the loading of his truck in the A. O. Smith yard in Milwaukee. At the time Stevens received the suspension, he was on workmen's compensation and would not have been employed in any event. Accordingly, he lost no pay that he would otherwise have earned. This suspension, like the other reprimands, first came to Stevens' attention at the 10(j) hearing months later.

Stale complaints, coupled with a fanciful version of the events assertedly bringing about Stevens' discharge, do not rebut the strong prima facie case which the General Counsel established. Accordingly, I conclude that the Respondent discharged Dan W. Stevens because of his membership in and activities on behalf of the Union and, in so doing, violated Section 8(a)(1) and (3) of the Act.

Lupo was employed by the Respondent in November 1990. He signed a union card on or about May 10. He was discharged (removed from the casual driver list) on or about June 19, 7 days after filing one of the unfair labor practice charges in this case. The asserted reason for the discharge was his failure to make himself available for dispatch, although the Respondent presumably had no policy of forced dispatch and even featured that policy, in conversations with drivers, as a reason for avoiding unionization. The Respondent's response to Lupo's long-sought desire to become a regular full-time driver was, at best, ambivalent. Before the organizing drive arose, JE told Lupo that it would be a while before he would be considered for permanent status. After the drive arose, JE acceded to a driver request that Lupo be hired on a full-time basis, subject only to the concurrence of two employees who were missing from the company meeting. JE even said that he would notify Lupo of this decision the following day. Within days, JE wrote Lupo, saying that Lupo would not be considered immediately for permanent status because, among other things, there were insufficient runs justifying the employment of another full-time driver. At the same time, the Respondent was hiring four new employees. The other proffered reason for denying Lupo permanent status was that he had failed to make himself available for dispatch on May 22. Not only was this reason contrary to the Company's announced policy against forced dispatches but the facts stated in the reprimand, namely, that Lupo had been drinking, were also false.

Throughout June, following his last dispatch on June 7, Lupo continued to make himself available for dispatch. On or about June 10 he phoned JE and asked why new employees were being assigned to runs in preference to himself and was given a curt reply relating to union activities and to Lupo's dubious future with the Company. This reply clearly suggested that JE was aware that Lupo was among the majority of employees who had signed union cards. Lupo visited the company office on or about June 14 to pick up his paycheck and was not informed, either then or on any other occasion, of any dispatch to which he had been assigned, notwithstanding the Company's repeated assertion that it had been attempting to contact him for 2 weeks without success.

The reasons advanced for the discharge of Lupo, a known union adherent, were flimsy and pretextual and without foundation in fact. They fall far short of any reliable explanation which would rebut the strong prima facie case of discrimination which the General Counsel established. Accordingly, I conclude that Anthony Lupo was discharged because of his membership in and activities on behalf of the Union and that the discharge violated Section 8(a)(1) and (3) of the Act.

The Respondent's Refusal to Bargain

The parties have agreed to a generic description of an appropriate bargaining unit. It should include all full-time and regular part-time truckdrivers and driver-mechanics employed at the Clarksville terminal. They disagree, in some respects, as to who should be included in that unit. They agree that Glisson, Conrad, Logan, Logsdon, Stevens, Longoria, Tomes, Lupo, and Starcher should be in the unit, as of that date. The General Counsel also contends that Denham and Suddeth should be included, thereby establishing a bargaining unit of 11 members. There is no reason why Denham, who was then a full-time driver on the Respondent's payroll, should not be included and I do so. As for Suddeth, he was not only a mechanic but also drove for the Respondent on occasions when driver shortages arose. He was always on call and regularly employed. His status clearly fits the unit description of a regular driver mechanic. Accordingly, I include his name among those eligible to vote on May 19.

Six of these individuals signed union cards which were admitted into evidence on or before May l9. Their designation of the Union would give the Union majority status as of that date. Denham said as much at the informal drivers' meeting which took place before the company meeting on May 19. Respondent objects to any determination of majority based on Longoria's card because it was not produced at the hearing for inspection. Longoria credibly testified that he signed a union card before the May 19 meeting. Apparently his card was mislaid. It is well settled that secondary evidence is admissible to authenticate the signing of a card and I would do so in this instance, thereby counting Longoria's designation of the Union in determining its status as of May 19. *Aero Corp*., 149 NLRB 1283, 1291 (1964) (Monroe Lindsey); *J. P. Stevens & Co*., 247 NLRB 420 at 486 (1980) (Fred Houston); *Hedstrom Co*., 223 NLRB 1409, 1411 (1976) (William Hammer); *Gupta Permold Corp*., 289 NLRB 1234, 1258 (1988) (Brian Moree). The Respondent also objects to the use of Stevens' card because, while Stevens filled out the body of the card, he neglected to affix his signature in cursive script at the bottom. Such a trivial oversight does not invalidate a card. *Pilgrim Life Insurance Co*., 249 NLRB 1228 at 1241 (1980) (Debra Marie Marinaro); *Laidlaw Waste Systems*, 305 NLRB 30 (1991) (Delbert Baldwin). Thus, it is clear that, as of May l9, 1991, the Union had been designated the collective-bargaining representative by 8 out of the 11 individuals employed by the Respondent in its driver-mechanic bargaining unit.

The Respondent points out that the Union did not make a demand for recognition until July 18 and contends that majority status should be determined as of that date, not as of May 19. If this were so, the cards of Denham, Stevens, and Lupo would still have to be counted since they are discriminatees and cannot be deprived of their right to designate a bargaining agent by the Respondent's unlawful conduct. *John Rinkel & Son*, 157 NLRB 744 (1966); *Brunswick Meat Packers*, 164 NLRB 887 (1967); *Wisconsin Bearing Co*., 193 NLRB 249 (1971); *Custom Bent Glass Co*., 304

NLRB 373 (1991). As of July 18, the date of the demand, there were four additional drivers on the Respondent's payroll. These are the individuals who were hired in late May, presumably in response to the ad which was placed in the Louisville *Courier-Journal*. Using July 18 as the date for determining majority status would mean that the Union still had eight cards in a unit of 15 rather than 11 employees and would not be deprived of a majority status.

However, May 19, not the later date, is the appropriate date to use for this purpose. It is well settled that a so-called *Gissel*[21] order is a remedy for an 8(a)(1) violation, not an 8(a)(5) violation. Hence, where, as here, an employer embarks on a campaign of illegal activities designed to undermine the union's majority status, a union will be deemed to have achieved that status if it has done at any time after the unlawful campaign has begun. Indeed, there is no legal requirement that a union, in such circumstances, even make a demand for recognition in order to be entitled to the benefit of a bargaining order. In this case, the Respondent began to undermine the Union's status as soon as it learned that its employees were organizing, an event which occurred several days before the May 19 date here in issue. *Lapeer Foundry & Machine*, 289 NLRB 952 (1988); *M. K. Morse Co.*, 302 NLRB 921 (1991); *Laidlaw Waste Systems*, supra. In light of these considerations, I conclude that by failing and refusing to bargain with the Union as the exclusive majority representative of its employees in the unit noted above, the Respondent violated Section 8(a)(1) and (5) of the Act.

On these findings of fact and on the entire record considered as a whole, I make the following

CONCLUSIONS OF LAW

1. Q-l Motor Express, Inc. is now and at all material times has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. General Drivers, Warehousemen & Helpers Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time drivers and driver-mechanics employed by the Respondent at its Clarksville, Indiana terminal, exclusive of office clerical employees and supervisors as defined in the Act, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.

4. Since on or about May 19, 1991, the Union has been the exclusive collective-bargaining representative of all the employees in the unit found appropriate in Conclusion of Law 3 for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing to recognize and bargain collectively with the Union as the exclusive collective-bargaining representative of its employees employed in the unit found appropriate in Conclusion of Law 3, the Respondent has violated Section 8(a)(5) of the Act.

6. By discharging Donald Ray Denham, Dan W. Stevens, and Anthony Lupo because of their membership in and activities on behalf of the Union, the Respondent violated Section 8(a)(3) of the Act.

7. By the acts and conduct set forth above in Conclusions of Law 5 and 6; by coercively interrogating employees concerning their union activities and the activities of other employees; by creating in the minds of employees the impression that their union activities are the subject of company surveillance; by threatening to discharge employees and to close the Company in order to discourage union activities; by promising and paying increased wages to employees in order to discourage union activities; by threatening to impose on employees more onerous working conditions if they engaged in union activities; by promising to adjust grievances in order to discourage union activities; and by threatening to take unspecified reprisals upon employees if they unionized, the Respondent violated Section 8(a)(1) of the Act.

8. The unfair labor practices recited above have a close, intimate, and adverse effect on the free flow of commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in cerain unfair labor practices, I will recommend that it be required to cease and desist therefrom and to take certain affirmative actions designed to effectuate the purposes and policies of the Act. Because the independent violations of Section 8(a)(1) of the Act found are repeated and pervasive and evidence an attitude on the part of the Respondent to behave in total disregard of its statutory obligations, I will recommend to the Board a so-called broad 8(a)(1) remedy designed to suppress any and all violations of that section of the Act. *Hickmott Foods*, 242 NLRB 1357 (1979). The recommended Order will also recommend that the Respondent be required to offer to Donald Ray Denham, Dan W. Stevens, and Anthony Lupo full and immediate reinstatement to their former or substantially equivalent employment and to make them whole for any loss of earnings which they may have sustained by reason of the discriminations practiced against them, in accordance with the *Woolworth* formula,[22] with interest at the rate prescribed by the Tax Reform Act of 1986 for the overpayment and underpayment of Federal income taxes. *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The General Counsel has requested a so-called *Gissel* remedy which would require the Respondent to recognize and bargain with the Union as the exclusive bargaining representative of its production and maintenance employees. In this case, the Respondent engaged in a campaign of wholesale intimidation of its employees. It included the discharge of the in-house leader of the campaign and two other card signers. The Respondent threatened to close the plant and gave evidence of the seriousness of its announced intention when it carried out a companion threat to discharge union adherents. The 11-man unit in which this activity took place interacted with each other and with the Respondent's management on a highly personal basis, it is hard to imagine that an election could be conducted in an atmosphere free of coercion and intimidation when the owners and managers behaved without compunction in the manner in which they did. The Board and the Seventh Circuit have approved bargaining orders in other cases where illegal conduct was far more restrained than that which was recited in the record in this case. *NLRB*

[21] *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969).

[22] *F. W. Woolworth Co.*, 90 NLRB 289 (1950).

v. Henry Colder Co., 447 F.2d 629 (1971); *NLRB v. Copps Corp*., 458 F.2d 1227 (1972); *NLRB v. Big Ben Shoe Store*, 440 F.2d 347 (1971); *NLRB v. Brown Specialty Co*., 436 F.2d 372 1971); *NLRB v. Texaco, Inc*., 436 F.2d 520 (1971), cert. denied 409 U.S. 1008 (1972); *NLRB v. Self-Reliance Ukranian American Cooperative*, 461 F.2d 33 (1972); *Townhouse TV & Appliance v. NLRB*, 531 F.2d 26 (1976); *Walgreen Co. v. NLRB*, 509 F.2d 1014 (1975); *NLRB v. Berger Transfer Storage*, 678 F.2d 679 (1982). I will also recommend that the Respondent be required to expunge the personnel records of the three discriminatees of any and all reprimands and other disciplinary action taken in pursuit of its illegal purposes and that it be required to post the usual notices advising its employees of their rights and of the results in this case.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, Q-l Motor Express, Inc., Clarksville, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities and the union activities of other employees.

(b) Creating in the minds of its employees the impression that their union activities are the subject of company surveillance.

(c) Threatening to discharge employees or to close the plant in reprisal for engaging in union activities.

(d) Granting pay increases and promising to adjust grievances in order to discourage union activities.

(e) Threatening employees with more onerous working conditions and other unspecified reprisals for engaging in union activities.

(f) Discouraging membership in or activities on behalf of General Drivers, Warehousemen & Helpers, Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO, or any other labor organization, by discharging employees or otherwise discriminating against them in their hire or tenure.

(g) Refusing to recognize and bargain collectively with General Drivers, Warehousemen & Helpers, Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO as the exclusive collective-bargaining representative of all the Respondent's full-time and regular part-time drivers and driver-mechanics employed at its Clarksville, Indiana terminal, exclusive of office clerical employees and supervisors as defined in the Act.

(h) By any other means or in any other manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act.

(a) Offer to Donald Ray Denham, Dan W. Stevens, and Anthony Lupo full and immediate reinstatement to their former or substantially equivalent employment, without prejudice to their seniority or to other rights previously enjoyed, and make them whole for any loss of pay or benefits suffered by them by reason of the discrimination found, in the manner described above in the remedy section.

(b) Expunge from the personnel records of Donald Ray Denham, Dan W. Stevens, and Anthony Lupo any and all disciplinary warnings and discharge notices, and notify them in writing that such warnings and notices will not form the basis for future disciplinary actions.

(c) Recognize and, on request, bargain collectively in good faith with General Drivers, Warehousemen & Helpers, Local Union No. 89, affiliated with the International Brotherhood of Teamsters, AFL–CIO, as the exclusive collective-bargaining representative of all full-time and regular part-time drivers and driver-mechanicg employed by the Respondent at its Clarksville, Indiana terminal, exclusive of office clerical employees and supervisors as defined in the Act.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at the Respondent's Clarksville, Indiana terminal copies of the attached notice marked ''Appendix.''[24] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[24] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''